

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

TAHIR M. DAVAV,
Plaintiff,

vs.

CITY OF CINCINNATI,
Defendants.

Case No. 1:15-cv-235
Barrett, J.
Litkovitz, M.J.

**REPORT &
RECOMMENDATION**

On March 30, 2015, prose plaintiff submitted the instant action in the United States District Court for the Eastern District of Kentucky, Northern Division at Covington. (Doc. 1). Subsequently, on April 9, 2015 this matter was transferred to the United States District Court for the Southern District of Ohio, Western Division. (Doc. 2).

On October 22, 2015, the Court issued a Order ordering plaintiff to pay the full filing fee of \$400.00 or submit an application and affidavit to proceed *in forma pauperis* within thirty (30) days. (Doc. 4). Plaintiff was advised that failure to comply with the Order would result in dismissal of his case for want of prosecution. *Id.* On November 5, 2015, the Court's Order was returned by the United States Postal Service marked as "Return to sender". (Doc. 5). To date, there has been no indication that plaintiff is actively involved in the prosecution of this matter. Accordingly, because plaintiff has failed to comply with the Order issued on October 22, 2015, dismissal is appropriate. Fed. R. Civ. P. 41(b); *Link v. Wabash R.R.*, 370 U.S. 626, 630-631 (1962); *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint be **DISMISSED** with prejudice for lack of prosecution.

2. The Court certify pursuant to 28 U.S.C. § 1915(a) that for the foregoing reasons an appeal of this Order would not be taken in good faith and therefore deny plaintiff leave to appeal *in forma pauperis*. Plaintiff, a non-prisoner, remains free to apply to proceed *in forma pauperis* in the Court of Appeals. See *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), overruling in part *Floyd v. United States Postal Serv.*, 105 F.3d 274, 277 (6th Cir. 1997).

12/2/15
Date


Karen L. Litkovitz
United States Magistrate Judge

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NOTICE TO THE PARTIES REGARDING FILING OF OBJECTIONS TO THIS R&R

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to these proposed findings and recommendations within **FOURTEEN DAYS** after being served with this Report and Recommendation (“R&R”). Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to seventeen days (excluding intervening Saturdays, Sundays, and legal holidays) because this R&R is being served by mail. That period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. If the R&R is based, in whole or in part, upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party’s objections within **FOURTEEN DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).